FORM NLRB-4479
(3-84)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

T.G. WELDING, INC.

Employer

and

Case No. 11-RC-6474

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, ORNAMENTAL, AND REINFORCING IRONWORKERS, LOCAL 843, AFL-CIO1/

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9*(c)* of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3*(b)* of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein .2/
3. The labor organization*(s)* involved claim*(s)* to represent certain employees of the Employer.
4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9*(c)(1)* and Section 2*(6) (7)* of the Act for the following reasons:3/

SEE ATTACHED

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **April 18, 2002**.

Dated April 4, 2002

at Winston-Salem, North Carolina

/s/Willie L. Clark, Jr.

Regional Director, Region 11

1/ The name of the Petitioner appears as amended at hearing.

2/ The Employer, a North Carolina corporation with an office located in Richfield, North Carolina, is engaged in providing miscellaneous steel erection services at a jobsite in Charlotte, North Carolina. During the past twelve months, the Employer, in the course and conduct of its business operations, provided services valued in excess of $50,000 to Steel Fab, Incorporated (hereinafter "Steel Fab"), an enterprise within the State of North Carolina which is directly engaged in interstate commerce.

3/ The Petitioner seeks to represent a company-wide unit comprised of all employees employed and classified by the Employer as ironworkers, welders and laborers. All of these employees are currently working at the Employer's Charlotte, North Carolina jobsite, where the Employer is providing steel erection services to Steel Fab on two projects, the Hearst Tower (hereinafter "Tower") and the Hearst Tower Plaza (hereinafter "Plaza"). In addition, the Petitioner seeks to exclude from this unit an individual who it contends is a supervisor under Section 2(11) of the Act. In contrast, the Employer argues that the petition should be dismissed based on its contention that the work it has been performing at the foregoing jobsite will be completed no later than April 15, 2002, and that it has no pending bids or contracts for any other work in the future. In the alternative, the Employer contends that a company-wide unit is inappropriate and that, if the Board were to direct an election, it should do so only for the unit currently in existence at the Charlotte jobsite. The Employer further contends that the individual who the Union seeks to exclude is not a Section 2(11) supervisor.

Based on the record evidence, as set out more fully below, including the imminent completion of the current project and the lack of future work for the Employer, I find that it would serve no useful purpose to conduct an election at this time. I shall, therefore, herein dismiss the petition, subject to the possibility of reinstatement upon appropriate motion by Petitioner should the current unit continue in existence for a substantially longer time than anticipated or should the Employer acquire additional work for employees employed in the classifications of welders, laborers and ironworkers. Because I am dismissing the petition, any determination concerning the supervisory status of the contested individual is rendered moot.

A. Background

The Employer's owner testified that he is a welder and that he began his business, which he operates from an office located in his house in Richfield, North Carolina, in 1988. The Employer primarily places bids for work with Steel Fab, but also has performed work for a company called Charlotte Miscellaneous Steel within the past year. Over the past decade, the Employer has performed virtually all of its work within the State of North Carolina, including projects in Winston-Salem, High Point, Raleigh and Charlotte. The Employer's owner testified that he has taken employees with him to work in various locations when he performed work in a particular area, but that he also had hired locally, to avoid the expense of paying for employees' lodging and per diem expenses. The maximum number of employees he has employed at one time is fifteen. At other times, the Employer has had as few as three employees, and the owner also has worked solely on his own. The Employer currently employs eight employees as welders, laborers and ironworkers, including the individual who the Union asserts to be a supervisor, all of whom are working at the Charlotte jobsite. About four of these employees had worked previously for the Employer at prior jobs in Charlotte and had come to the Tower project with no break in service. In addition, one of these employees had worked on the Employer's jobsites in North Carolina locations outside of Charlotte, including High Point, as well as jobs in South Carolina, Virginia and Atlanta, Georgia. Two employees had worked for the Employer at the High Point jobsite.

B. The Charlotte Jobsite

In late 2000, the Employer entered into a contract with Steel Fab to perform the miscellaneous steel erection package at the Tower, a 47-story building owned by a major bank and located in downtown Charlotte. This work included stairs, handrails and the fire escape. The Employer began working on the Tower in late December 2000 or early January 2001. As work on this initial contract was nearing completion, the Employer then contracted with Steel Fab to perform the structural and deck steel work on an additional building, called the Plaza, a two-story building encompassing about 20,000 square feet, designed to be used as retail space, and located adjacent to the Tower. This work originally had been awarded to another subcontractor, who had run into timeliness problems, so Steel Fab contracted with the Employer to do the job. The Employer began performing the Plaza job in mid-February 2002.

Steel Fab President Ron Sherrill testified that the firm deadline for full completion on both the Tower and Plaza projects was April 15, 2002, and that, should the Employer be unable to complete its work by that time, Steel Fab would hire additional steel subcontractors to ensure that the deadline was met. At the time of the hearing, which took place on March 18, the Employer's contract work on the Tower project was complete. The record establishes that there was some additional work, described either as change order or upfit work, remaining to be done at the Tower. The Employer had performed some of this additional work on the Tower, which was not included in its original contract – specifically, the week before the hearing, the Employer installed six to eight channels in the ceiling, which involved the installation of several pieces of channel, as well as tube steel and angle. In regard to the availability of upfit work at the Tower, the president of Steel Fab testified that his company did not have any contracts to perform any of this work. In regard to the Plaza Project, the Employer's owner testified that the work remaining to be done there would be completed in about three to four weeks, barring rain delays.

The Employer's owner testified that, at the time of the hearing, he did not have any contracts for future work, nor had he placed any bids for work that were pending at that time. The Steel Fab president confirmed that his company did not have any contracts with the Employer, apart from the Plaza project, and that the Employer had not submitted any bids to Steel Fab. The major contracts for upcoming work currently held by Steel Fab, with whom the Employer does the majority of its business, involve only the furnishing of steel products, rather than steel installation. As a result of this lack of work, the Employer's owner testified that he planned to lay off the current employees at the close of the Plaza project.

Petitioner presented six employee witnesses at hearing, all of whom were currently working for the Employer at the Charlotte jobsite and had worked for the Employer for varying durations, ranging from six months to six and a half years. Two of these employees had experienced breaks in service with the Employer and thereafter had returned to work for the Employer. The employee witnesses provided testimony concerning both the status of work performed on the two projects and on the job duties and functions of Ed Weakley, the individual who the Union asserts should be excluded from the bargaining unit as a supervisor.

In regard to the status of pending work, several witnesses testified about work that they believed still remained to be done by the Employer. Specifically, two witnesses testified that they had unloaded stacks of steel on the 14th floor of the Tower about two months earlier, and that their foreman had told them at that time that they would be doing the work on this steel. One of these witnesses testified that this steel was still on the 14th floor one week before the hearing. Another employee witness testified

that he had helped unload steel angle irons and tubes onto the 47th floor of the Tower the previous week, and that it would take about one week or a week and a half to install this steel. Several witnesses testified further that, up until the previous week, they had never been told that the Employer did not have work in the future, and one witness testified that the owner specifically had told him one month earlier that there would be work for them in Charlotte after the Tower and Plaza jobs were complete. Concerning the steel on the 14th floor of the Tower, on rebuttal, the Employer's owner specifically denied that there was any remaining work to be done by his company on the 14th floor.

C. The Supervisory Issue

Concerning the supervisory status of Ed Weakley, several witnesses testified both to his directing of work and to his issuance of discipline. The evidence establishes that he reads the blueprints for the job and directs employees in their specific assignments throughout the day. The owner testified that Weakley spent 30 to 40 percent of his time directing employees, and that he gave Weakley specific instructions each morning concerning how work assignments were to be made that day. Two employees testified that, up until two weeks before the hearing, the owner did not spend much time actually at the jobsite, although the owner contended that he was at the jobsite continually and left only for brief periods of time. Although the record is not entirely clear, it appears that Weakley, an ironworker, also works alongside the other employees on the job every day. Weakley has authorized time off for at least one employee, although the record does not establish the number of times that this has happened.

In regard to discipline, one witness testified that he was present when Weakley fired a co-worker on the spot at the Tower project after that worker had performed incorrect welds. The owner, after having testified initially that Weakley could not fire employees, and that he could not recall any instance in which Weakley had made a recommendation to him that someone be fired, conceded that Weakley had indeed terminated the particular employee on the jobsite and that the owner had allowed that action to stand. The Employer did not contend that Weakley had acted outside his authority in terminating the employee nor did it proffer any evidence to establish that the owner made any independent investigation of the incident that resulted in the employee's termination.

Additional record evidence establishes that Weakley drives one of the two company trucks, the other of which is driven by the owner. His wage rate is either $1.00 or $1.50 an hour higher than the highest paid unit employee and he has described himself to employees as second-in-command.

D. Analysis and Conclusions

The Board has long held that when an employer's operations in a petitioned-for unit are scheduled for imminent closure, no useful purpose would be served by directing an election in that unit. Davey McKee Corporation, 308 NLRB 839, 840 (1992); M.B. Kahn Construction Co., Inc., 210 NLRB 1050 (1974); General Motors Corp., 88 NLRB 119 (1950). The Board also has concluded that it will entertain a motion to reinstate that petition, should the petitioned-for unit stay in existence for a substantially longer period than anticipated or should the Employer acquire additional construction projects covering the classifications of employees described in the petition. Davey McKee Corporation, 308 NLRB at 840.

Applying the foregoing principles to this case, I find that the record evidence supports the conclusion both that the Employer's operations at the Charlotte jobsite will cease in the near future and that the Employer currently has no bids or contracts for future work. I find, therefore, that directing an election in the current bargaining unit would serve no useful purpose. In this regard, there simply is no

probative evidence to establish that the Plaza work will continue past mid-April of this year. Even the testimony of the employee witnesses does not support a finding that there was more than a month's worth of work at either the Plaza or the Tower projects at the time of the hearing. Likewise, there is no probative evidence to refute the Employer's contention that it has no work scheduled after the Plaza project is completed.

The Petitioner's essential contention appears to be that the Employer's assertions regarding the lack of upcoming work are not to be believed. In support of this thesis, the Petitioner relies on the Employer's history, including its long-standing relationship with Steel Fab and the lack of layoffs in the past, as well as on the conspicuous timing of the Employer's announced cessation of work and the testimony of employee witnesses concerning the work that they believe actually remains to be done on the project.

I must reject Petitioner's premise, as it rests on speculation, rather than substantial evidence. Simply put, there had been no showing that the work at the Employer's Charlotte jobsite will continue in any substantial measure past mid-April, or that the Employer in fact has contracts or pending bids for work anywhere else. The Employer's predicament, whether of its own making or created by the marketplace, is that it has no scheduled work. Although this position is at variance with at least the two previous years, when the Employer worked continuously, it apparently is not an unprecedented situation, as the owner testified that he had worked solely by himself in the past. On the record evidence, settled Board principles mandate the dismissal of the petition, as the Board holds that no useful purpose is served by holding an election in a bargaining unit that will be eliminated in the near future.

That the Employer does not currently have work scheduled to be performed, however, does not end the analysis. The Board in Davey McKee went on to conclude that a motion to reinstate the petition should be entertained under certain circumstances, including the possibility that the current work did not conclude as quickly as anticipated or in the event that the Employer acquired additional work to be performed by employees in classifications within the scope of the petitioned-for unit. In regard to the scope of the unit issue, Petitioner seeks to represent a company-wide unit of all employees of the Employer classified as welders, ironworkers and laborers. As set forth above, all of those employees currently are working at the Tower and Plaza jobsite. The Employer argues on brief that the company-wide unit sought by Petitioner is inappropriate, and that, if the Board were to direct an election at this time, it should do so only in the unit that currently exists at the Charlotte jobsite. Given my decision to dismiss the petition, the Employer's argument in this regard is moot. Should the Petitioner subsequently file a motion to reinstate the petition, I will review that motion under settled Board principles pertaining to the scope of the unit, as well as voter eligibility for elections in the construction industry. See Steiny and Company, Inc., 308 NLRB 1323 (1992).

Finally, under the foregoing circumstances, I find it unnecessary to resolve the disputed issue concerning the supervisory status of any employee.

Accordingly, I shall dismiss the petition in this matter. Should the petitioned-for unit remain in existence for a substantially longer time than is currently anticipated or should the Employer acquire additional construction projects for work to be performed by employees in the classifications of laborers, welders and ironworkers, I will entertain a motion by the Petitioner to reinstate the petition.

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